U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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PUBLIC COPY

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAR 1 6 2010

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development and computer software services company. It seeks to employ the beneficiary permanently in the United States as a senior member of technical staff[1] pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a Form ETA 750,[2] Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not have a bachelor's degree equivalent to a U.S. bachelor's degree in one of the stipulated fields of study based on his passing Sections A & B of the Institution of Engineers (India) program.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

As set forth in the director's November 28, 2007 denial, the issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

Eligibility for the Classification Sought

As noted above, the ETA 750 in this matter is certified by DOL. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien

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[1] On the certified ETA Form 750, the Department of Labor (DOL) occupation title and code is identified as Industrial Engineer. 17-2112.00.

[2] After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Askkenazy Property Management Corp.* 817 F. 2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS,* 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001) (unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated).

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[3]

With the I-140 petition, the petitioner submitted a copy of a document dated August 1988 that states the beneficiary was elected to the Institution of Engineers (India) (IEI) as a senior technician. The petitioner also submitted the results of the beneficiary's examinations for Section A (DIP) in Winter 1990, and for Section B, "Elect & Comm" in winter 1992. These results list both previous exemption marks and current examination marks. In all the beneficiary undertook four subjects for his examination in 1990 and eight subjects for his examination in 1992.

The petitioner also submitted a copy of a letter to the IEI from [redacted] Ministry of Education and Social Welfare dated August 16, 1978. The letter is entitled "Recognition of Technical/Professional Qualifications." [redacted] states that a pass in Sections A & B of the IEI's examinations is recognized by the Indian government "at par with a Bachelor's degree in the appropriate field of Engineering from a recognized Indian University for purposes of recruitment to superior posts and services under the central government." The letter writer further states that the ministry has "no objection to the IEI issuing a certificate to any individual provided it is confined to the statement of facts only as mentioned above."

The petitioner also submitted an academic evaluation report written by [redacted] Bothell, Washington, dated March 20, 2000. [redacted] stated

[3] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

that the IEI document stating that the beneficiary had passed Sections A in winter 1990 and Section B in winter 1992, and signed by the member and counsel, secretary and director general of the IEI, is the equivalent of a bachelor's degree in electronics and communication engineering from an accredited U.S. college or university.

The record also contains a copy of the beneficiary's diploma for a three-year fulltime diploma course of study in electronics and communication engineering taken at the MRK Polytechnic, Andhra Pradesh, Hyderabad, and the transcripts for the beneficiary's studies from 1985 to 1987. The document is issued by the State Board of Technical Education, and states that the beneficiary finished his course requirements as of September 30, 1987.[4]

In response to the director's RFE, the petitioner submitted an additional academic credential evaluation written by [redacted] dated September 6, 2007. [redacted] states that the beneficiary's academic studies are " academically equivalent to a four-year Bachelor of Science in electronics and communication engineering as awarded by an accredited U.S. university."[redacted] stated that the "Final Pass for the IEI degree is recognized, by law by the Indian government, as at par with a degree in electronics and communications engineering from an Indian university."

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The AAO finds that the FIS and the WES evaluations exclusively focus on the beneficiary's passage of Parts A and B of the Institution of Engineers (India) coursework to determine that the beneficiary has the equivalent of a U.S. baccalaureate degree in electronic or communications engineering. Both evaluators indicate that the beneficiary's academic credentails are the equivalent of a U.S. bachelor's degree in a stipulated field based on [redacted] letter to the IEI. However, this letter is not persuasive that the passage of Parts A and B is the equivalent of achieving a U.S. baccalaureate degree. The Ministry letterwriter clearly states that the passage of Parts A & B are on par with an Indian baccalaureate degree in an appropriate engineering field for purposes of recruiting individuals into higher positions and position within the Indian government. It does not establish that the

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[4] On Part B of the ETA Form 750, the beneficiary did not identify these documents on the ETA Form 750, or list his polytechnic studies. The record indicates that the beneficiary was born in August 1968. Thus, he completed his three-year diploma studies when he was nineteen years old, and was elected into the IEI as a senior technician when he was twenty years old.

Ministry of Education considers passage of the IEI examinations equivalent to a U.S. baccalaureate in a similar engineering field.[5]

Further,with regard to the equivalency of the beneficiary's credentials to a U.S. baccalaureate degree, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO, according to its website, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." AACRAO, http://www.aacrao.org/about/ (accessed March 9, 2010). Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." *Id.* According to the login page, EDGE is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO. [redacted] Director of International Education Services, "AACRAO EDGE Login," http://aacraoedge.aacrao.org/index.php

The AAO notes that authors for EDGE are not merely expressing their personal opinions. Rather, authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. "An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), available for download at www.aacrao.org/publications/guide_to_creating_international_publications.pdf. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

In the section related to the Indian educational system, EDGE provides that "the Diploma in Engineering represents attainment of a level of education comparable to up to one year of university study in the United States. Credit may be awarded on a course-by-course basis." It also states that the entrance requirement for a diploma degree is the completion of secondary school Certificate or equivalent." Thus, the beneficiary's three-year diploma course of studies appears to be equivalent of one year of university study in the United States.

With regard to the credentials provided by Indian professional engineering associations, EDGE provides the following information:

> Associate Membership in 1) The Institution of Engineers, India (IEI), 2) Institution of Electronics and Telecommunications Engineers (IETE, formerly AMIETE), or 3) the Institution of Mechanical Engineers, India (IMEI) Part A and B is awarded upon completion of Section "A" examination basic commonalities and Section B examination consisting of compulsory, advanced commonality, discipline commonalities and specialization options courses in various Engineering Divisions (Aerospace, Agricultural,

[5] Neither the petitioner nor the evaluators address the issue of whether an Indian baccalaureate of engineering is the equivalent of a U.S. baccalaureate degree.

> Architectural, Chemical, Civil, Computer, Electrical, Electronics and Telecommunications, Environmental, Marine, Mechanical, Metallurgical and Materials, Mining, Production and Textile Engineering) following the higher secondary certificate and engaged in engineering or industrial profession at least for a period of 5 years.

EDGE also states that entry into the Associate membership program requires successful completion of higher Secondary certificate (l2th grade or completion of secondary school certificate (10^{th}) with Diploma in Engineering from Polytechnic (3 years). The AAO notes that the beneficiary's entry into the IEI Associate Membership program appears predicated on his three year polytechnic course of study in engineering. EDGE further states that the status of Associate Membership in one of the three Indian professional engineering association represents "attainment of a level of education comparable to a bachelor's degree in the United States."

(See enclosed EDGE excerpts.)

The AAO notes that the record does not contain any evidence that the beneficiary ever obtained the Associate Membership status following his passage of Parts A and B of the IEI curriculum. There is no certificate of any such Associate Membership in the record. The only certificate in the record is an IEI document provided prior to the beneficiary's taking any coursework through IEI that identifies him as elected to the IEI as a Senior Technician. The EDGE excerpts on professional association suggests that the individual seeking IEI Associate Membership status also has to work for a period of five years in the field. The record is also not clear that the beneficiary was engaged in engineering or an industrial profession at least for a period of five years within a relevant period of time, prior to being considered for Associate Member. Thus, the petitioner has not established that the beneficiary's passage of Sections A & B of the IEI examination is the equivalent of a U.S. baccalaureate degree in the fields stipulated on the ETA Form 750.

Further, a United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977). This decision involved a petition filed under 8 U.S.C. §1153(a)(3) as amended in 1976. At that time, this section provided:

> Visas shall next be made available . . . to qualified immigrants who are members of the professions . . . .

The Act added section 203(b)(2)(A) of the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

> Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . .

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244 is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act,

provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[6] In order to have experience and

[6] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of a nonimmigrant visa

education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. at 60900.

For this classification, advanced degree professional, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991). *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability"). The record does not contain evidence that the IEI is a college or university, or that the diploma that the beneficiary received for his three years of study at the State School of Technical Education in Hyderabad, in combination with his passage of Sections A & B of the IEI examination is the is the equivalent of a four-year U.S. baccalaureate degree.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as he does not have the minimum level of education required for the equivalent of an advanced degree, namely, a U.S. bachelor's degree in the stipulated fields of study followed by five years of work experience.

We must also consider whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification.

Qualifications for the Job Offered

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

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classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu,* 736 F. 2d at 1309.

The key to determining the job qualifications is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. It is important that the ETA-750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

> ***Minimum Education, Training, and Experience Required to Perform the Job Duties.*** Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C.

1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Regarding the minimum level of education and experience required for the proffered position of Project Manager in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education: Grade School Y
High School Y
College: Y

College Degree Required: Bachelor's Degree or equivalent
Major Field of Study: Computer Science/Electronics Eng/Communication Eng

Experience: 5 years in the proffered position, or
5 years in the related occupation of software quality assurance engineering

Block 15: Experience/knowledge must include:
Automation and load testing tools; database and application tuning; JAA; RDBMS (Oracle, SQL Server, DBZ); load balancing tools (Resonate, Cisco redirector); Network protocol (TCP/IP); profiling tools (e.g., Optimizit).

The beneficiary indicated that he received a certificate from The Institution of Engineers (India) Calcutta, India, studying electronics and communications Engineering, from August 1988 to May 1993. The form indicates that the beneficiary's certificate is evaluated as the equivalent of a Bachelor's degree in electronics and communications Engineering from the United States. However, as discussed previously, the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," and, thus, does not qualify for preference visa classification under section 203(b)(2) of the Act.

With regard to his work experience, the beneficiary represents that he has held the following jobs prior to the October 8, 2004 priority year date:

Job One
[redacted]
February 2001 to October 5, 2004 (The date he signed the Form ETA 750)

[redacted]

Job duties listed include testing the state of the art solutions in areas of enterprise application integration, including automation test suites based on automation framework and tools.

Job Two
[redacted]
November 1993 to February 2001
[redacted]

Job duties include responsible for customer support, project planning and implementation. Providing technical support to customer engineers, extending technical support to marketing department in sizing the products to effectively meet the customer requirements.

Job Three
[redacted]
April 1988 to October 1993
[redacted]

Job duties listed include involvement in the design, development and manufacturing of HF 20S, 100W and 1000w transceivers.

The petitioner also submitted a letter dated July 10, 2006 written by [redacted], Hyderabad, India. [redacted] stated he was the beneficiary's coworker while the beneficiary worked at CMC. [redacted] lists an extensive list of duties he claims the beneficiary performed, involving various databases, applications, including many applications and programs listed in Section 15 of the ETA Form 750.

The AAO does not view the single letter of work verification to be sufficient to establish the beneficiary's prior work experience in either the proffered position or in the related occupation of software quality assurance engineering. Although the beneficiary has worked for the petitioner for slightly over three years, the petitioner submits no further corroboration of this employment or of the specific job duties performed by the beneficiary. Further, the only letter of work verification is from a co-worker, as opposed to the beneficiary's supervisor or employer at [redacted]. The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation*—

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

> (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Finally, the evidence in the record including the beneficiary's descriptions of his job duties does not clearly establish his knowledge and experience working in the various databases, programs, and specialized automation programs listed in Section 15 of the ETA Form 750. Thus, the beneficiary does not meet the work experience requirements on the labor certification. For these reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.